

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *eg* D.C.
05 MAY 19 PM 2:12

ROBERT L. BY TROLO
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W.D. OF TN, MEMPHIS

JOHN DOUGHERTY,)	
)	
Plaintiff,)	
)	
v.)	No. 03-2115 Ma V
)	
FAULKNER'S AUTO BODY CENTER,)	
INC., and RONALD COLEMAN,)	
)	
Defendants.)	

ORDER DENYING PLAINTIFF'S MOTION TO AMEND SCHEDULING ORDER

Before the court is Plaintiff John Dougherty's motion to amend the scheduling order, filed April 29, 2005. Defendant Ronald Coleman responded on May 16, 2005. For the following reasons, the motion is DENIED.

Plaintiff is currently prosecuting another case in this court styled Dougherty v. Faulkner, No. 04-2088 ("the fraud action"), which involves similar facts and is currently scheduled for trial on June 20, 2005. This suit ("the derivative action") is scheduled for trial on July 18, 2005. Plaintiff seeks to amend the scheduling order by switching the two trial dates, trying the derivative action on June 20, and delaying the fraud action until July 18, 2005.

In the derivative action, Plaintiff asserts shareholder derivative claims against Defendant Ronald Coleman arising from his

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work as an attorney on behalf of Faulkner Auto Body Center, Inc. ("FABC") in prior litigation.¹ In the fraud action, Plaintiff seeks damages directly from FABC and Defendant Gary Faulkner. Plaintiff contends that FABC has no assets other than its claims against Coleman and Gary Faulkner and that Faulkner also has few assets. Plaintiff argues, therefore, that if he is unsuccessful in the derivative action, he would have little reason to proceed with the fraud action. Plaintiff claims further that if he is successful in the fraud action, the amount of damages will be unknown if the derivative claims against Coleman in this suit are not resolved.

Although it is true that a particular outcome in the derivative action could lead to the settlement or voluntary dismissal of the fraud action, it is also possible that a particular outcome in the fraud action will lead to dismissal of the derivative action. One disputed issue in both cases is the allegedly fraudulent conveyance by FABC to Gary Faulkner, individually, of FABC's interest in prior anti-trust litigation. If, in the fraud action, this conveyance were found valid, Plaintiff could be deprived of his claims in the derivative action arising from the anti-trust litigation. Thus, an earlier trial of the fraud action could lead to the dismissal of the derivative

¹ The complaint also asserts that the corporation is deadlocked and seeks appointment of a custodian.

action. The court, therefore, can find no compelling reason why the derivative action should be tried before the fraud action.

Plaintiff had the opportunity to sue FABC, Gary Faulkner, and Ronald Coleman jointly, or to move that the two suits be consolidated. (See Stat. Conf. Minutes, March 26, 2004.) Because he chose not to do so, he should not now be heard to complain of the inconvenience of bringing the two actions separately. For the foregoing reasons, Plaintiff's motion to amend the trial schedule is DENIED.

So ordered this 19th day of May 2005.



SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 116 in case 2:03-CV-02115 was distributed by fax, mail, or direct printing on May 19, 2005 to the parties listed.

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Honorable Samuel Mays
US DISTRICT COURT